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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,986	07/05/2001	Arturo Contini	PETR/SF/6080 US-B	2457

466 7590 08/09/2002

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EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/897,986

Applicant(s)

CONTINI ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The disclosure is objected to because of the following informalities: In the specification, page 1, paragraph 5, applicant has referred to the claims in the specification in order to teach or describe the invention. Applicant is reminded that claims are drafted or derived from what has been taught and disclosed by the specification. Also, in the specification, Page 4-5, Examples 8-11, what constitutes the salt base in Example 8, sweet base in Example 9 and flavoring base in Examples 10-11 is the base the list of ingredients? Explanation is required.

Appropriate correction is required.

2. Claims 1-9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In all of the claims applicant has used "characterized in that" which renders the claims as it is not clear what "characteristics" are being sought after in the composition applicant should draft the composition in clear, positive meaningful language and avoiding recitations of characterized in that or a composition characterized by language. Applicant is requested to delete "characterized in that" and insert --wherein-- therefor in all of the claims. In claim 1, applicant should draft the claim as --An alimentary sauce containing as the main ingredient balsamic vinegar of Modena-- and avoid the "for use" or "use of" language. In claim 2, applicant should recite, "The sauce of claim 1, further containing thickening agents and sugars. The affect of adding sugars to soften the acid taste or thickeners are not required in drafting the composition claims. In claim 3 applicants again should recite "The sauce of claim 2,

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wherein the thickening agent is selected from the group consisting of modified starch and xanthan gum". With respect to claim 4, applicant should recite that sauce further contains sugars. In claim 5, applicant should recite "The sauce of claim 1, which further includes flavoring bases". Again, applicant need not recite that the flavoring base gives specific aroma or flavor to the sauce. In claims 6 and 7, applicant should use Markush language to recite the different types of flavoring bases as well as spices, herbs, seasonings that can be added to the sauce of claim 5.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Dean. Dean teaches a garlic sauce preparation which contains as a main ingredient balsamic vinegar of Modena. [Note Column 2, lines 35-37 and 63-67]. The garlic sauce of Dean further includes ground nuts or slivered nuts which is admixed with garlic and then the vinegar to form a thickened sauce thus anticipating claims 1 and 2.
5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Alessi. Alessi teaches a white balsamic vinegar which contains as a main ingredient balsamic vinegar from Modena. [Note Column 3, lines 10-23 and the Example in Column 4]

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6. Claim 1, is rejected under 35 U.S.C. 102(b) over Monari Federzoni balsamic vinegar because applicant's claims recite that the sauce contains as a main ingredient balsamic vinegar of Modena, Monari Federzoni is an Italian manufacturer of balsamic vinegar from Modena the balsamic vinegar which has been made for a number of years, reads on applicant's claim 1, i.e., it is a balsamic vinegar from Modena.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by the product Balsamic Soy Sauce and Balsamic Glazing Sauce produced by American Culinary Gardens as described on the America Culinary Gardens web site copyright 1998-2001 as the sauce includes imported balsamic vinegar from Italy notably from the Modena area.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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10. Claims 3-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Dean USP 5,885,644 in combination with Freeman USP 5,221,550.

Dean '644 discloses the invention substantially as claimed. Dean '644 teaches garlic sauce preparation which includes garlic, slivered nuts, vinegar, water, oil and salt. The garlic sauce is specifically prepared to avoid the addition of starch. The sauce is thickened by blending the garlic and nuts to provide a homogeneous dough-like consistency, to which the vinegar, salt and water is added to garlic and nuts to provide a sauce having a "batter" consistency. Dean '644 teaches that the vinegar used in the composition is preferably a balsamic vinegar because of its enhanced rich flavor. Dean specifically teaches that the balsamic vinegar employed is imported from Modena, Italy.[Note Column 34-67]

However, Dean does not teach using either a modified starch or xanthan gum in the composition and prefers not to use a starch (bread or potato) as Dean feels that the addition of starch minimizes the flavor of the garlic and oil and prefers to add slivered or ground nuts to the composition.

Freeman teaches a method of preparing an oriental sauce which is a vinegar based sauce which includes sugar which is caramelized. [Note column 2, lines 64-68] wherein a sauce is prepared and reduced by use of a scraped surface heat exchange operating at atmospheric pressure and having a scraper speed of below 200 RPM. As the sauce is reduced and concentrated Freeman teaches that the sauce can then have additional ingredients added there which includes cream, starch or water.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a balsamic vinegar based sauce which includes thickeners from the combined teachings of Dean and Freeman because both references teach that vinegar based sauces can be made which include thickeners both references teach that starch is known as a conventionally thickener used in the preparation of sauces. Dean specifically teaches that balsamic vinegar from Modena provides a robust sauce and further teaches that starch is not used in his composition because it interferes with the garlic flavor not the vinegar in the sauce and prefers to use slivered or ground nuts instead of a potato or bread starch as the thickener in the sauce and to replace nuts for a starch for thickening a sauce would have been obvious to one having ordinary skill in the art and as a whole the invention has been taught and fairly suggested by the combined teachings of Dean and Freeman.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bonnie Churchill Food Page Monari Federzoni teach recipes prepared from Monari Federzoni Balsamic Vinegar, the recipes were on the internet having a copyright of 1999 Bonnie Churchill, Inc. Maerker et al. teach edible aqueous acid food thickened dispersion. The edible aqueous acidic dispersion comprises a 15% vinegar mixed with mustard, garlic and common salt which is then added with another mixture comprising sat, castor sugar, and maltodextrin the mixture thickens to a semi-liquid salad dressing. Yamauchi et al. teaches a mayonnaise base which includes vinegar and thickeners. Chalupa teach gellan gum flavor beads including vinegar

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beads which are used in sauces and dressings. Vella teach sweet and sour garlic sauce comprising duck sauce, garlic and grenadine as well as starches and vinegars.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat
Primary Examiner
Art Unit 1761

August 7, 2002